

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-123912-14

PLR-123913-14

Date: DECEMBER 15, 2014

Legend

Settlor 1 =
Settlor 2 =
Trust =

Trustee =
Date 1 =
Date 2 =
Trust 1 =

Trust 2 =

Trust 3 =

Trust 4 =
=

Attorney 1 =
Attorney 2 =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Year 6 =
Year 7 =
Year 8 =
Year 9 =
Year 10 =

Year 11	=
Year 12	=
Year 13	=
Year 14	=
Year 15	=
Year 16	=

Dear :

This letter responds to your authorized representative's letter dated May 21, 2014, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to elect out of the generation-skipping transfer (GST) exemption automatic allocation rules.

The facts and representations submitted are summarized as follows:

On Date 1, Settlor 1 and Settlor 2 (Settlors) established an inter vivos irrevocable trust (Trust). Trust established three separate trusts, Trust 1, Trust 2 and Trust 3. Trusts 1, 2 and 3 are for the benefit of Settlor's issue. All three trusts are insurance trusts. On Date 2, Settlor 2 created Trust 4 for the benefit of her spouse and issue.

The terms of Trust 1 and Trust 2 provide that until the death of the last Settlor, the Trustee may pay from the net income and principal, such amounts as determined by the Trustee, in her absolute discretion, for health, education, support or maintenance of Settlor's issue.

Trust 1 provides that, on the death of the second Settlor, Trust 1 is to be divided into one share for each living child of Settlor's and one share for each predeceased child of Settlor's who is survived by issue. Trust 1 further provides that, with respect to each share, Trustee will distribute income or corpus to a child as necessary for health, education, support or maintenance of that child. On Trust termination, the principal is to be distributed to Trust 2.

Trust 2 provides that, upon the termination of the estate of the last Settlor to die, trust income and principal may be distributed to the issue of Settlor's as Trustee, in her absolute discretion, determines. Trust 2 terminates on the death of the last surviving issue of Settlor's.

Trust 1 and Trust 2 provide that Settlor's issue have withdrawal powers over a proportionate share of each contribution to each Trust in an amount equal to the value of any assets transferred to Trust 1 and Trust 2, prior to the death of the second Settlor. The power may not exceed the maximum amount allowable at the time of the transfer as an

exclusion from gift tax under § 2503(b)(3). Trust 1 and 2 further provide that that any unexercised right shall lapse at the end of each year to the extent of the greater of \$5,000 or 5 percent of the value of Trust 1.

Trust 3 does not provide for any distributions during the lives of Settlers. On the death of each Settler, the proceeds of the insurance policies will be added to Trust 2.

Trust 4 provides that during Settler 2's lifetime, the trustees may pay out of the income or principal or both of the trust such amounts as the trustees in their sole discretion determine to Settler 2's spouse and issue. Trust 4 further provides that Settlers' issue have withdrawal powers over a proportionate share of each contribution Trust 4 in an amount equal to the value of any assets transferred to Trust 4 limited to the excess, if any, of the maximum amount excludable from a Settler's taxable gift for such year under § 2503(b) over the amount that such child may withdraw from Trust 1 or Trust 2. Any unexercised right shall be reduced at the end of each year by the greater of \$5,000 or 5 percent of the value of Trust 4. If any Trust 4 property is includible in Settler 2's estate and if Settler 2's spouse survives Settler 2, the property is to be distributed to Settler 2's spouse outright. All other property in Trust 4 is to be held in further trust by the trustees. The trustees may distribute income and principal as in their sole discretion for the benefit of Settler 2's spouse and her issue. At the death of Settler 2's spouse, the trustees are to distribute outright or in further trust to such of Settler 2's issue as spouse appoints by will. If the property is held in further trust for the benefit of Settler 2's issue, the trustees are instructed to distribute various percentages of the principal until a beneficiary reaches the age of 50, at which time all of the assets remaining in the beneficiary's trust will be distributed and the trust will terminate.

Attorney 1 provided Settlers with legal and tax advice in connection with the creation of Trust in Year 1. However, Trust was created prior to the enactment of § 2632(c) which provides for an election out of the automatic allocation rules. Attorney 1 was not actively advising Settlers at the time § 2632(c) was enacted in June 2001. No GST allocation was made to Trust 1, Trust 2 or Trust 3, in the years prior to the enactment of § 2032(c) and no affirmative GST allocation has ever been made to Trust 1, Trust 2 or Trust 3.

Settlers believed that all of their gifts to Trust 1, Trust 2 and Trust 3, were eligible for the annual exclusion under § 2503(b) and consequently, that no Forms 709 United States Gift (and Generation-Skipping Transfer) Tax Returns were required for Years 1 through 14. Consequently, no Forms 709 were filed for Years 1 through 14. Settlers were not required to file Forms 709 for Years 1 through 10. However, Settlers should have filed Forms 709 for Years 11 through 14. Settlers now plan to file Forms 709 for Years 11 through 14. No gift or GST tax liability exists for any of those years.

Settlors retained Attorney 2 in Year 5 to advise them on estate and gift planning matters including tax consequences of their transfers to Trust. Although Attorney 2 reviewed Trust, he did not realize that automatic allocations were being made to property transferred to Trusts 1, 2 and 3 beginning in 2001 under § 2632(c), and thus did not provide guidance to Settlers to opt out of any future GST allocations. Attorney provided additional advice in Year 7 when Settlor 1 established Trust 4.

In Year 15, Attorney 2 again provided counsel to Settlers with respect to their available unified estate and gift tax credit and GST tax exemption. The advice given was premised on the understanding that none of Settlers' lifetime GST tax exemption had been allocated to any lifetime transfers. In Year 16, in connection with analyzing the tax consequences of certain transactions made by Settlers during Year 15, Attorney 2 determined that automatic allocations of GST exemption had been made to property transferred to Trust 1, Trust 2 and Trust 3, beginning in 2001. Settlers have opted out of the automatic allocation for property transferred to Trust 1, Trust 2 and Trust 3, as well as Trust 4 for Year 15.

No distributions have been made from Trust 1, Trust 2, Trust 3 or Trust 4, nor have any taxable terminations or other events occurred giving rise to GST tax liability.

LAW AND ANALYSIS

Section 2601 provides that a tax is imposed on every generation-skipping transfer (GST). Section 2611(a) provides that the term "generation-skipping transfer" means: (1) a taxable distribution; (2) a taxable termination; and (3) a direct skip.

Section 2602 provides that the amount of the tax imposed by § 2601 is the taxable amount multiplied by the applicable rate.

Section 2612(c) provides that the term "direct skip" means a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2613(a) provides, in part, that the term "skip person" means -- (1) a natural person assigned to a generation which is 2 or more generations below the generation assignment of the transferor.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2631(c) provides that, for purposes of § 2631(a), the GST exemption amount for any calendar year shall be equal to the applicable exclusion amount under § 2010(c) for such calendar year.

Section 2632(a)(1) provides that any allocation by an individual of his or her GST exemption may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate, regardless of whether such a return is required to be filed. Section 2632(a)(2) provides that the manner in which allocations are to be made shall be prescribed by forms or regulations issued by the Secretary.

Section 2632(b)(1) provides that if any individual makes a direct skip during his lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero (automatic allocation). If the amount of the direct skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

Section 2632(b)(2) provides that for purposes of § 2632(b)(1), the unused portion of an individual's GST exemption is that portion of such exemption which has not previously been allocated by such individual (or treated as allocated under § 2632(b)(1) or § 2632(c)(1)).

Section 2632(b)(3) provides that an individual may elect to have the automatic allocation rule of § 2632(b)(1) not apply to a transfer.

Section 2641(a) defines the applicable rate as the product of the maximum Federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2641(b) provides that the term "maximum Federal estate tax rate" means the maximum rate imposed by § 2001 on the estates of decedents dying at the time of the taxable distribution, taxable termination, or direct skip, as the case may be.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is the excess (if any) of 1 over the applicable fraction. The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of the GST exemption allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust or involved in the direct skip, reduced by the sum of any Federal estate tax or state death tax actually recovered from the trust attributable to such property, and any charitable deduction allowed under § 2055 or 2522 with respect to such property.

Section 2642(g)(1)(A) provides, that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under § 2642(g)(1), the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that, under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a generation-skipping transfer trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

Section 301.9100-2 provides an automatic extension of time for making certain elections. Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-3(a) provides, in part, that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides, in part, except as provided in § 301.9100-3(b)(3)(i) through (iii), that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a

tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, Settlor 1 and Settlor 2 are granted an extension of time of 120 days from the date of this letter to make an election under § 2632(b)(3) that the automatic allocation rules do not apply to the Year 4 through 14 transfers to Trust 1, Trust 2 and Trust 3. In addition, Settlor 2 is granted an extension of time of 120 days from the date of this letter to make an election under § 2632(b)(3) that the automatic allocation rules do not apply to the Year 8 through 14 transfers to Trust 4. The election out will be effective as of the date of each transfer. The election should be made on supplemental Forms 709 for Year 4 and Year 8. The Forms 709 should be filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center - Stop 82, Cincinnati, OH 45999. You should attach a copy of this letter to the supplemental Form 709. We have enclosed a copy for this purpose.

In accordance with the Power of Attorney on file with this office, we have sent a copy of this letter to your authorized representatives.

Except as expressly provided herein, we neither express nor imply any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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This ruling is directed only to the Taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Leslie H. Finlow
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes
Copy of this letter